



4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

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The Chickasaw Nation; Amendments to the Beverage Control Act of 2007, and the Chickasaw Nation Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes amendments to the Beverage Control Act of 2007 and the Chickasaw Nation Code, which was originally enacted by the Chickasaw Tribal Legislature and published in the *Federal Register* on April 2, 2007.

DATES: These amendments shall become applicable on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT Ms. Diane Jobe, Tribal Government Services Officer, Eastern Oklahoma Regional Office, Bureau of Indian Affairs, 3100 West Peak Boulevard, Muskogee, OK 74402, Telephone: (918) 781-4685, Fax: (918) 781-4649.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the *Federal Register* notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. On September 18, 2015, the Chickasaw Tribal Legislature, by Permanent Resolution 32-008, duly adopted amendments to Title 3, Chapter 2, and Title 5, Chapter 15. This *Federal Register* notice comprehensively

amends and supersedes the existing Title 3, Chapter 2 (the Beverage Control Act of 2007), and Title 5, Chapter 15, Article F, Section 5-1506.35, of the Chickasaw Nation Code, which was enacted by the Chickasaw Tribal Legislature by Permanent Resolutions 24-001 and 24-003 on October 20, 2006, and December 15, 2006, respectively, and published in the *Federal Register* on April 2, 2007 (72 FR 15716).

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary–Indian Affairs. I certify that the Chickasaw Tribal Legislature of the Chickasaw Nation, Oklahoma, duly adopted these amendments to Title 3, Chapter 2 (Beverage Control Act of 2007), and Title 5, Chapter 15, of the Chickasaw Nation Code on September 18, 2015.

Dated: December 15, 2017.

John Tahsuda,
Principal Deputy Assistant Secretary – Indian Affairs
Exercising the Authority of the Assistant Secretary – Indian Affairs.

Title 3, Chapter 2 (Beverage Control Act of 2007), of the Chickasaw Nation Code, is amended to read as follows:

TITLE 3

3. BUSINESS REGULATIONS AND LICENSING

CHAPTER 2. ALCOHOLIC BEVERAGE LICENSING AND REGULATIONS

Section 3-201.1	Title.
Section 3-201.2	Findings.
Section 3-201.3	Definitions.
Section 3-201.4	Chickasaw Nation Tax Commission Powers and Duties.
Section 3-201.5	Inspection Rights.
Section 3-201.6	Sales of Alcohol.
Section 3-201.7	Licensing and Application.
Section 3-201.8	Taxes.
Section 3-201.9	Rules, Regulations and Enforcement.
Section 3-201.10	Abatement.
Section 3-201.11	Severability and Effective Date.
Section 3-201.12	Amendment and Construction.

<u>SECTION 3-201.1</u>	<u>TITLE</u>
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Be it enacted by the Tribal Legislature of the Chickasaw Nation assembled, that this Act may be cited as the “Beverage Control Act of 2007” (hereinafter “Act”), as amended. This Act is enacted by the Chickasaw Tribal Legislature under the authority of Article VI, Section 1 and Article VII, Section 4 of the Constitution of the Chickasaw

Nation, wherein the Legislature is required to prescribe procedures and regulations pertaining to the Chickasaw Nation.

SECTION 3-201.2 **FINDINGS.**

The Legislature finds that:

1. it is necessary to adopt strict controls over the operation of certain beverage sales conducted in Indian Country which is under the jurisdiction of the Chickasaw Nation;

2. it is necessary to establish legal authority for the Chickasaw Nation, its agents, servants, employees, and licensees to engage in Alcoholic Beverage sales on tribal lands within the legal boundaries of the Chickasaw Nation, provided that such locations are in compliance with the laws of the State of Oklahoma.

SECTION 3-201.3 **DEFINITIONS.**

As used in this Act, the following words shall have the following meanings unless the context in which they appear clearly requires otherwise:

1. “Alcohol” means and includes hydrated oxide of ethyl, ethyl Alcohol, Alcohol, ethanol, or Spirits of Wine, from whatever source and by whatever process produced;

2. “Alcoholic Beverage” means Alcohol, Spirits, Beer and Wine as those terms are defined herein and also includes every liquid or solid, patented or not, containing Alcohol, Spirits, Wine or Beer and capable of being consumed as a beverage by human beings, but does not include Low-Point Beer;

3. “Bar” means any establishment with special space and accommodations for the Sale of alcoholic beverages and for consumption on-premises as defined herein;

4. “Beer” means any beverage containing more than three and two-tenths percent (3.2%) of Alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of barley or other grain, malt or similar products. “Beer” may or may not contain hops or other vegetable products. “Beer” includes, among other things, Beer, ale, stout, lager Beer, porter and other malt or brewed liquors, but does not include sake, known as Japanese rice Wine;

5. “Chickasaw Nation Tax Commission” means the commission created by the Legislature as found in Section 2-1071 in the Code of Laws of the Chickasaw Nation;

6. “Light Wine” means any Wine containing not more than fourteen percent (14%) Alcohol measured by volume at sixty (60) degrees Fahrenheit;

7. “Liquor Store” means any store at which Alcoholic Beverages are sold and, for the purpose of this Act, includes stores only a portion of which are devoted to the Sale of Alcoholic Beverages;

8. “Low-Point Beer” or “Light Beer” means and includes beverages containing more than one-half of one percent ($\frac{1}{2}$ of 1%) Alcohol by volume, and not more than three and two-tenths percent (3.2%) Alcohol by weight, including but not limited to Beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or similar products;

9. “Mixed Beverage” means one or more servings of a beverage composed in whole or part of an Alcoholic Beverage in a sealed or unsealed container or any legal size for consumption on the premises where served or sold by the holder of a license;

10. “Original Package” means any container or receptacle used for holding Alcoholic Beverages filled and stamped or sealed by the manufacturer;

11. “Public Place” means federal, state, county or tribal highways and roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages and filling stations which are open to and/or generally used by the public and to which the public has right to access; public conveyances of all kinds and character; and all other place of like or similar nature to which the general public has right to access, and which are generally used by the public; (PR24-003, 12/15/07)

12. “Sale” and “Sell” mean the exchange, barter and traffic, including the selling or supplying or distributing, by any means whatsoever, by any person to any person;

13. “Spirits” means any beverage other than Wine, Beer or Light Beer, which contains more than one-half of one percent ($\frac{1}{2}$ of 1%) Alcohol measured by volume and obtained by distillation, whether or not mixed with other substances in solution and includes those products known as whiskey, brandy, rum, gin, vodka, liqueurs, cordials and fortified wines and similar compounds; but shall not include any Alcohol liquid completely denatured in accordance with the Acts of Congress and regulations pursuant thereto;

14. “Tribal Court” means the Chickasaw Nation Tribal District Court;

15. “Tribal Lands” means any or all land over which the Chickasaw Nation exercises governmental powers and that is either held in trust by the United States for the benefit of the Chickasaw Nation or individual citizens of the Chickasaw Nation subject to restrictions by the United States against alienation, and dependent Indian communities, as

contained in Title 18 § 1151 of the United States Code;

16. “Wine” means and includes any beverage containing more than one-half of one percent ($\frac{1}{2}$ of 1%) Alcohol by volume and not more than twenty-four percent (24%) Alcohol by volume at sixty (60) degrees Fahrenheit obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, and includes vermouth and sake, known as Japanese rice Wine.

SECTION 3-201.4

CHICKASAW NATION TAX COMMISSION

POWERS AND DUTIES.

In furtherance of this Act, the Chickasaw Nation Tax Commission shall have the following powers and duties:

1. publish and enforce rules and regulations adopted by the Chickasaw Nation Tax Commission governing the Sale, distribution and possession of Alcoholic Beverages on Tribal Lands;
2. employ such persons as shall be reasonably necessary to allow the Chickasaw Nation Tax Commission to perform its functions;
3. issue licenses permitting the Sale or distribution of Alcoholic Beverages on Tribal Lands;
4. hold hearings on violations of this Act or for the issuance of revocation of licenses hereunder;
5. bring suit in Tribal Court or other appropriate court to enforce this Act as necessary;
6. determine and seek damages for violation of this Act;
7. make such reports as may be requested or required by the Governor of the

Chickasaw Nation, who may share those reports with the Chickasaw Tribal Legislature;

8. collect taxes and fees levied or set by the Chickasaw Tribal Legislature and keep accurate records, books and accounts;

9. adopt procedures which supplement this Act and regulations promulgated by the Chickasaw Nation Tax Commission and facilitate their enforcement. Such procedures shall include limitations on sales to minors, places where liquor may be consumed, identity of persons not permitted to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls; and

10. request amendments to this Act to address future changes in the way the Chickasaw Nation sells, distributes or possesses Alcoholic Beverages in order to ensure that his Act remains consistent with state Alcoholic Beverage laws.

SECTION 3-201.5 **INSPECTION RIGHTS.**

The premises on which beverages defined in this Act are sold or distributed shall be open for inspection by the Chickasaw Nation Tax Commission and/or its agents at all reasonable times for the purposes of ascertaining compliance with the rules and regulations of the Chickasaw Nation Tax Commission and this Act.

SECTION 3-201.6 **SALES OF ALCOHOL.**

A. A person or entity who is licensed by the Chickasaw Nation Tax Commission may make retail sales of beverages as defined in this Act in their facility and the patrons of the facility may consume such liquor within any facility, other than a convenience store location. The introduction and possession of beverages as defined in

this Act consistent with this Act shall also be allowed. All other purchases and sales of beverages as defined in this Act on Tribal Lands shall be prohibited. Sales of beverages as defined in this Act on Tribal Lands may only be made at businesses that hold a license from the Chickasaw Nation Tax Commission.

B. All sales of beverages as defined in this Act on Tribal Lands shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with use of credit cards such as Visa, Master Card, American Express, etc.

C. All sales of beverages as defined in this Act shall be for the personal use and consumption of the purchaser. Resale of any beverage as defined in this Act on Tribal Lands is prohibited. Any person who is not licensed pursuant to this Act who purchases beverages as defined in this Act on Tribal Lands and sells it, whether in the original container or not, shall be guilty of a violation of this Act and shall be subjected to paying damages to the Chickasaw Nation as set forth herein.

SECTION 3-201.7

LICENSING AND APPLICATION.

A. In order to control the proliferation of establishments on Tribal Lands that Sell or serve liquor by the bottle or by the drink, all persons or entities that desire to Sell beverages as defined in this Act on Tribal Lands must apply for and receive from the Chickasaw Nation Tax Commission a license under this Act. A person desiring to serve Alcoholic Beverages as defined by this Act on Tribal Lands must apply for and receive from the Chickasaw Nation Tax Commission a license under this Act.

B. Any person or entity applying for a license to Sell or serve beverages as defined in this Act on Tribal Lands must fill in the application provided for this purpose

by the Chickasaw Nation Tax Commission and pay such application fee as may be set by the Chickasaw Tax Commission. Said applications must be filled out completely in order to be considered.

1. Any person 21 years of age or older or entity that is owned or controlled by an individual 21 years of age or older may apply to the Chickasaw Nation Tax Commission for a license to Sell beverages as defined in this Act on Tribal Lands. A separate application and license will be required for each location where the applicant intends to Sell beverages as defined by this Act.

2. Any person 18 years of age or older, may apply to the Chickasaw Nation Tax Commission for a license to serve Alcoholic Beverages as defined in this Act. Provided, no person under 21 years of age may be employed in the selling or handling of Alcoholic Beverages or serve in designated bar or lounge areas.

C. Any person who holds a license pursuant to Section 3-201.7(b)(1) or (2) of this Act must at a minimum make a showing once every two years, and must satisfy the Chickasaw Nation Tax Commission, that he is a person of good character, having never been convicted of violating any of the state Alcoholic Beverage laws or the laws promulgated under this Act; that he has never been convicted of violating any of the gambling laws of Oklahoma, or any other state of the United States, or of this or any other tribe; that he has not had, preceding the date of his application for a license, a felony conviction of any of the laws commonly called prohibition laws; and that he has not had any permit or license to Sell any intoxicating liquors revoked in any county of Oklahoma, or any other state, or of any tribe; and that at the time of his application for

a license, he is not the holder of a retail liquor dealer's permit or license from the United States government to engage in the Sale of beverages as defined in this Act.

D. The Chickasaw Nation Tax Commission shall receive and process applications and related matters. All actions relating to applications by the Chickasaw Nation Tax Commission shall be by majority vote. The Chickasaw Nation Tax Commission may, by resolution, authorize one of its members or agent to issue licenses for the Sale of beverages as defined in this Act.

E. Each license shall be issued for a period not to exceed two (2) years from the date of issuance.

F. A licensee may renew its license if the licensee has complied in full with this Act; provided, however, that the Chickasaw Nation Tax Commission or its agent may refuse to renew a license if it finds that doing so would not be in the best interests of health and safety of the residents of the Chickasaw Nation.

G. The Chickasaw Nation Tax Commission or its agent may suspend or revoke a license due to one or more violations of this Act upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

H. Within 15 days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Chickasaw Nation Tax Commission under this Act, the licensee may deliver to the Chickasaw Nation Tax Commission a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Chickasaw Nation Tax Commission and a written

decision will be issued. Such decisions will be considered final unless an appeal is filed in accordance with Title 5, Chapter 2, Article G of the Chickasaw Nation Code. All proceedings conducted under all sections of this Act shall be in accord with due process of law.

I. Licenses issued by the Chickasaw Nation Tax Commission shall not be transferable and may only be used by the person or entity in whose name it is issued.

SECTION 3-201.8 **TAXES.**

A. As a condition precedent to the conduct of any operations pursuant to a license issued by the Chickasaw Nation Tax Commission, the licensee must obtain from the Chickasaw Nation Tax Commission such licenses, permits, tax stamps, tags, receipts or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Chickasaw Nation Tax Commission or otherwise showing compliance with the tax laws of the Chickasaw Nation.

B. In addition to any other remedies provided in this Act, the Chickasaw Nation Tax Commission may suspend or revoke any licenses issued by it upon the failure of the licensee to comply with the obligations imposed upon the licensee by the Chickasaw Nation Tax Commission, by the Chickasaw Nation, or any rule, regulation or order of the Chickasaw Nation Tax Commission.

SECTION 3-201.9 **RULES, REGULATIONS AND ENFORCEMENT.**

A. In any proceeding under this Act, conviction of one unlawful Sale or distribution of beverages as defined in this Act shall establish prima facie intent of unlawfully keeping, selling, or distributing beverages as defined in this Act in violation of this Act.

B. Any person who shall in any manner Sell or offer for Sale or distribution or transport beverages as defined in this Act in violation of this Act shall be subject to civil damages assessed by the Chickasaw Nation Tax Commission.

C. Any person within the boundaries of Tribal Lands who buys beverages as defined in this Act from any person other than a properly licensed facility shall be guilty of a violation of this Act.

D. Any person who keeps or possesses beverages as defined in this Act upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to Sell or distribute it contrary to the provisions of this Act, shall be guilty of a violation of this Act.

E. Any person who knowingly sells beverages as defined in this Act to a person who is obviously intoxicated or appears to be intoxicated shall be guilty of a violation of this Act.

F. Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee of such person, who shall knowingly permit any person to drink beverages as defined in this Act in any public conveyance shall be guilty of an offense. Any person who shall drink beverages as defined in this chapter in a public conveyance shall be guilty of a violation of this Act.

G. Except for persons possessing a valid license to serve beverages at designated locations as set forth in this Act, the following prohibitions shall apply:

1. No person under the age of twenty-one (21) years shall consume or acquire any beverages as defined in this Act; provided, no person under the age of twenty-one (21) years shall have in his possession Alcoholic Beverages as defined in this

Act. No person shall permit any other person under the age of twenty-one (21) years to consume beverages as defined in this Act on his premises or any premises under his control. Any person violating this prohibition shall be guilty of a separate violation of this Act for each and every drink so consumed.

2. Any person who shall Sell or provide any beverages as defined in this Act to any person under the age of twenty-one (21) years shall be guilty of a violation of this Act for each and every Sale or drink provided; provided, nothing in this Section shall be construed to criminalize the selling of Low-Point Beer by persons eighteen (18) years of age or older who (a) are employed by a licensed retailer of Low-Point Beer; and (b) make such sale in accordance with this Act.

3. Any person who transfers in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain beverages as defined in this Act shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Act.

4. Any person who attempts to purchase beverages as defined in this Act through the use of false or altered identification that falsely purports to show the individual to be over the age of twenty-one (21) years shall be guilty of violating this Act.

H. Any person who is convicted or pleads guilty to a violation of this Act shall be punished by imprisonment for not more than one (1) year, a fine not to exceed five thousand dollars (\$5,000) or a combination of both penalties. In addition, if such

person holds a license issued by the Chickasaw Tax Commission, the license shall be revoked.

I. When requested by the provider of beverages as defined in this Act any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

1. driver's license or identification card issued by any state department of motor vehicles;
2. United States Active Duty Military Identification card;
3. tribally-issued identification card; or
4. passport.

J. The consumption of beverages as defined in this Act on premises where such consumption or possession is contrary to the terms of this Act will result in a declaration that such beverages as defined in this Act are contraband. Any tribal agent, employee or officer who is authorized by the Chickasaw Nation Tax Commission shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property. Upon being found in violation of this Act, the party owning or in control of the premises where contraband is found shall forfeit all right, title and interest in the items seized which shall become the property of the Chickasaw Nation Tax Commission.

SECTION 3-201.10 **ABATEMENT.**

A. Any room, house, building, vehicle, structure or other place where beverages as defined in this Act are sold, manufactured, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this Act or of

any other tribal statute or law relating to the manufacture, importation, transportation, possession, distribution and Sale of beverages as defined in this Act and all property kept in and used in maintaining such place, is hereby declared a nuisance.

B. The chairman of the Chickasaw Nation Tax Commission, or if the chairman fails or refuses to do so, the Chickasaw Nation Tax Commission, by a majority vote, shall institute and maintain an action in the Tribal Court in the name of the Chickasaw Nation to abate and perpetually enjoin any nuisance declared under this Section. In addition to the other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure or place closed for a period of one year or until the owner, lessee, tenant or occupant thereof shall give bond or sufficient sum from \$1,000 to \$15,000, depending upon the severity of past offenses, the risk of offenses in the future, and any other appropriate criteria, payable to the Chickasaw Nation and conditioned that beverages as defined in this Act will not be thereafter kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this Act or of any other applicable tribal laws. If any conditions of the bond are violated, the bond may be applied to satisfy any amounts due to the Chickasaw Nation under this Act.

SECTION 3-201.11

SEVERABILITY AND EFFECTIVE DATE.

A. If any provision under this Act under this Act is determined by court review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Act or to render such provisions inapplicable to other persons or circumstances.

B. Once it has been signed into law by the Governor, this Act shall be effective on such date as the Secretary of the United States Department of the Interior certifies this Act and publishes the same in the *Federal Register*.

C. Any and all previous statutes, laws and ordinances of the Chickasaw Nation Code which are inconsistent with this Act are hereby repealed and rescinded. Specifically repealed is Title 3, Chapter 2, Sections 3-201 through 3-215 as they existed before passage of this, the Beverage Control Act of 2007.

SECTION 3-201.12 AMENDMENT AND CONSTRUCTION.

Nothing in this Act may be construed to diminish or impair in any way the rights or sovereign powers of the Chickasaw Nation or its tribal government other than the due process provision at Section 3-201.7.H which provides that licensees whose licenses have been revoked or suspended may seek review of that decision in Tribal Court.

Title 5, Chapter 15, Article F, Section 5-1506.35, of the Chickasaw Nation Code, as amended, shall read as follows:

TITLE 5

“5. COURTS AND PROCEDURES”

CHAPTER 15

CRIMINAL OFFENSES

ARTICLE F

CRIMES AGAINST PUBLIC HEALTH, SAFETY, AND WELFARE

SECTION 5-1506.35

POSSESSION, PURCHASE, AND CONSUMPTION
BY PERSONS UNDER TWENTY-ONE (21) YEARS
OF AGE.

A. It shall be unlawful for any person under twenty-one (21) years of age to either:

1. consume or possess with the intent to consume beverages as defined in the Beverage Control Act of 2007; or

2. purchase or attempt to purchase beverages as defined in the Beverage Control Act of 2007, except under supervision of law enforcement officers.

B. Possession, Purchase, or Consumption by Person Under Twenty-One (21) Years of Age shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), by imprisonment for not more than three (3) months, or both.

C. Nothing in this Section shall be construed to criminalize possession of an Alcoholic Beverage by a person who is at least eighteen (18) years of age and who is in possession of an Alcoholic Beverage solely and exclusively for the purpose of serving such Alcoholic Beverage within the scope of a license from the Chickasaw Nation Tax Commission.

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